

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**WHITE STALLION ENERGY
CENTER, LLC, et al.,**

Petitioners,

v.

**ENVIRONMENTAL PROTECTION
AGENCY, et al.,**

Respondents.

} Nos. 12-1100, 12-1176, 12-1177,
} 12-1178, 12-1180, 12-1184, 12-
} 1187, 12-1188
}

**OAK GROVE MANAGEMENT COMPANY LLC’S AND GULF COAST
LIGNITE COALITION’S RESPONSE TO NEW UNIT DEVELOPERS’
MOTION TO SEVER AND EXPEDITE AND REQUEST TO
PARTICIPATE IN BRIEFING**

Oak Grove Management Company LLC (“Oak Grove”) (Case No. 12-1187) and Gulf Coast Lignite Coalition (“GCLC”) (Case No. 12-1188) file this response to the motion to sever and expedite certain issues filed by “developers of new solid-fueled electric generating units” (“New Unit Developers”) on April 27, 2012 (Doc. 1371309), as clarified and modified on May 9, 2012 (Doc. 1373043). The motion, as modified, seeks to have two issues associated with the Mercury and Air Toxics Standards (“MATS”) rule, 77 Fed. Reg. 9304 (Feb. 16, 2012), severed and expedited.

Like the New Unit Developers, Oak Grove and GCLC are petitioners challenging certain aspects of the MATS rule. Oak Grove is the owner of Oak

Grove Units 1 and 2, which are lignite-fueled generation units located near Robertson County, Texas, subject to the MATS rule. GCLC is a non-profit corporation organized under the laws of the State of Texas that is comprised of individual electric generating and mining companies, also subject to the MATS rule. Oak Grove and GCLC agree with the New Unit Developers that expeditious judicial review of the MATS rule is warranted, given the significant burdens imposed by the rule on all sources and the short lead-time for sources to comply.¹ Further, as their initial disclosures will address,² Oak Grove and GCLC have an interest in the issues that the New Unit Developers seek to sever. Therefore, in the event the Court grants the New Unit Developers' motion, Oak Grove and GCLC request to participate in the briefing of those two issues as petitioners.

Additionally, Oak Grove and GCLC are working with other petitioners to

¹ The MATS rule's aggressive deadlines require that hundreds of EGUs retrofit complex and extensive flue gas desulfurization, selective catalytic reduction, and baghouse technologies, all within three years. *See* 77 Fed. Reg. at 9409-10. Because it takes years to engineer, procure, and install these technologies, companies must begin planning and engineering within the first year of the program, and all affected EGUs will be entering the construction phase simultaneously. *See* EPA Response to Comments, Vol. 2 (Dec. 21, 2011) at 315-16 (summarizing comments on timelines for control equipment installation). No previous regulatory program has required hundreds of EGUs to undertake retrofits at the same time, and all of the EGUs subject to the rule cannot be successfully retrofitted concurrently while maintaining the reliability of the electricity supply. *See id.* at 306, 315-16; *infra*, at ¶ 3.

² On April 27, 2012, the Court granted an unopposed motion to extend the deadline for initial disclosures to May 25, 2012. Doc. 1371247.

propose a briefing format that would afford prompt and efficient review of all issues. Oak Grove, GCLC, and other petitioners intend to file this proposal at the time of their initial disclosures or shortly thereafter.

For the reasons stated herein, Oak Grove and GCLC seek permission to participate in, and present briefing in, the severed docket in the event the Court grants New Unit Developers' motion as modified.

Respectfully submitted,

/s/ P. Stephen Gidiere III
One of the Attorneys for Oak Grove
Management Company LLC

/s/ Bill Cobb (by PSG w/ permission)
One of the Attorneys for Gulf Coast
Lignite Coalition

Dated: May 17, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2012, I will cause the foregoing Joint Response to New Unit Developers' Motion to Sever and Expedite and Request to Participate in Briefing to be served through the CM/ECF system, which will send a notice of filing to all registered attorneys of record.

/s/ P. Stephen Gidiere III
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